Remarks

For the Claims:

Applicant submitted claims 8-14 and 16 in connection with a Request for Continued Examination, dated 16 June 2006. Accordingly, claims 8-14 and 16 are pending. This Office Action rejects claims 8-14 and 16. Applicant amends claim 8 and retains claims 9-14 and 16 as previously submitted. Applicant respectfully requests reconsideration in view of the following remarks.

This Office Action rejects claims 8-14 and 16 under 35 U.S.C. 112, second paragraph, as being indefinite. In particular, the Office Action asserts that the claim 8 recitation of "allowing one of the builders to select..." is unclear as to whether a builder actually selects a lender since only "allowing" is required by the language of the claim.

Claim 8 is being amended to more particularly point out that which Applicant believes to be the invention. In particular, claim 8 is being amended to recite "selecting from the loan website a desired lender from a list of lenders, the selecting operation being performed by one of the builders." Applicant believes the modification to independent claim 8 provides clarification that the builder actually selects a lender and that amended independent claim 8 is definite. Claims 9-14 and 16 are also definite due to their dependence from claim 8. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 8-14 and 16 under 35 U.S.C. §112, second paragraph.

This Office Action rejects claims 8-15 under 35 U.S.C. 103(a) as being unpatentable over Ingram et al., U.S. Patent Publication

No. 2002/0077967 (hereinafter Ingram) in view of DeFrancesco, U.S. Patent Number 6,587,841.

Regarding independent claim 8, the Office Action alleges that Ingram largely discloses the invention with the exception being that Ingram does not specifically disclose selecting a desired lender from a list of lenders to obtain credit approval of a builder from the desired lender. The Office Action further alleges that DeFrancesco discloses the selecting limitation and cites FIG. 3AC and Col. 30, line 48, through Col. 31, line 15, as the alleged teaching. The Office Action concludes that it would have been obvious to modify Ingram to utilize the lender selection list of DeFrancesco because this would allow a builder to establish a borrowing relationship with a preferred lender. The Office Action asserts that the importance of such business relationships among the parties of Ingram is specifically set out in the Abstract which recites:

> Such an embodiment establishes a more involved relationship between builder and dealer, involving supplies as well as funding.

The Office Action also cites paragraph [0046] in the Ingram reference as a teaching of the importance of business relationships among the parties.

Applicant respectfully disagrees that it would have been obvious to combine the teachings of Ingram and DeFrancesco in an attempt to render obvious Applicant's invention of amended independent claim 8. As stated in In re Fritch, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992):

> The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

As further stated in National Tractor Pullers Assn., Inc. v. Watkins, 205 USPQ 892 at 911 (ND ILL, March, 1980):

> A modification of a prior art patent or device which would render that device unworkable for its intended purposes cannot be said to suggest such a modification. (emphasis supplied)

Correspondingly, as stated in In re Buehler, 515 F.2d 1134, 185 U.S. P.Q. 781, 786, 787 (C.C.P.A. 1975):

> The claimed method involves doing what the reference tries to avoid. The prior art strongly suggests that such a method would produce unacceptable results. This is the very antithesis of obviousness.

The proper evaluation for determining patentability is to consider whether the prior art suggests the desirability of modifications which make the prior art device more closely resemble Applicant's invention of claim 8. This suggestion must be found in the prior art and not Applicant's specification. Moreover, a modification that would render a device unworkable for its intended purposes provides strong evidence supporting a failure to suggest such a modification. Furthermore, a finding of non-obviousness should be determined when the claimed method does what the prior art seeks to avoid.

Applicant's invention of claim 8 enables a direct relationship between the builder and the lender via the loan website in which the builder selects a desired lender from a list of lenders, and the desired lender determines approval for the builder to receive credit from the desired lender. This enables the builder to select who he or she wishes to deal with. By allowing the builder to select who he or she wishes to deal with,

the builder can, for example, apply with a lender who may have the best available rate.

The Office Action alleges that it would be obvious to modify Ingram to utilize the lender selection list of DeFrancesco because this would allow a builder to establish a borrowing relationship with a preferred lender. The Office Action defends this assertion by citing passages in Ingram that allegedly point to the importance of such a business relationship. In the Ingram reference, a builder is synonymous with a borrower, a dealer is synonymous with an inspector, and each of the builder and the dealer are distinct from a system administrator and a lender (paragraph [0017]) and Figure 1).

These cited passages do emphasize a more involved relationship between a builder/borrower and a dealer/inspector. However, paragraph [0046] of Ingram cited in the Office Action specifically teaches that an administrative entity has control over obtaining money and disbursing it to the borrower. Since the administrative entity has control over obtaining money, i.e., approve loan 58 as taught in paragraph [0048] at col. 4, line 2, and shown in FIG. 3C, there is no purpose for establishing a relationship between a builder/borrower and a lender. Consequently, Ingram might be considered to suggest a more involved relationship between the administrative entity and a lender. However, the interposition of the administrative entity and its functions between the lender and builder/borrower suggests away from a relationship between a builder/borrower and a lender.

Since there is no suggestion of establishing a relationship between a builder/borrower and lender, it follows that Ingram cannot suggest the desirability of the builder selecting a desired lender and the desired lender determining approval for

the one builder to obtain credit from the desired lender, as recited in amended independent claim 8. Any suggestion for such a modification to Ingram is found only in Applicant's specification.

Ingram strongly suggests that a direct relationship between the borrower and the lender produces unacceptable results. In particular, Ingram teaches that construction financing has typically been provided in many instances by traditional banking institutions (lenders) that cater to the financial needs of multiple entities (paragraph [0004]). Such institutions (lenders) often have not given proper prioritization to loans specific to construction needs. Loan officers with expertise in local markets and businesses are often transferred or discharged to meet the changes of a dynamic marketplace. Thus, Ingram believes traditional sources for construction financing via a direct relationship between a borrower and a lender cannot adequately serve the loan administration needs of the builder/borrower.

A purpose of the Ingram system is to remove the borrower and lender from a direct relationship by utilizing an administrative unit (system administrator) that administers the construction loan, obtains money and disburses it to a borrower or other third party. Among other functions, it is the administrative unit (system administrator) that determines approval for the one builder to obtain credit. In particular, the system administrator performs an underwriting process to determine builder certification (i.e., determine approval for the builder to obtain credit/a construction loan) by analyzing operating history and credit history of the builder [0050]. Consequently, the Ingram system circumvents a relationship between the borrower and lender, and the suggested unacceptable results of such a relationship.

If Ingram was modified to more closely resemble Applicant's invention of claim 8, such that the Ingram builder/borrower selects a desired lender, and the desired lender determines approval for the builder to obtain credit from the desired lender, Ingram would no longer work for its intended purpose. Namely, Ingram would no longer work for its intended purpose of utilizing an administrative unit (system administrator) to control the business arrangements and financing [0015] so that, as strongly suggested by Ingram, a less knowledgeable, less efficient, and lower level of service traditional banking institution need not be involved.

Since Ingram would be rendered unworkable for its intended purpose, Ingram cannot suggest the desirability of modifications that make the prior art device more closely resemble Applicant's invention of claim 8. Moreover, one skilled in the art would not be motivated to make the changes required of Ingram to more closely resemble Applicant's claimed invention without first having read Applicant's specification. Rather, it is only Applicant's specification which teaches doing that which Applicant claims.

It should also be emphasized that it is not proper to view the Ingram administrative unit (system administrator) as being a lender in an attempt to deprecate Applicant's invention. As stated in Ingersoll-Rand Co. v. Brunner & Lay, Inc., 1177 USPQ 112, 116 (5th Cir. 1973):

> Moreover, it is not realistic to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art (emphasis supplied).

Ingram clearly teaches of a lender 26 that supplies monetary funding for a loan to a funding account 32 managed by the administrative unit (system administrator) 20. When the teachings of Ingram are fully considered, it is evident that Ingram teaches of a lender distinct from the administrative unit (system administrator), with the administrative unit actually administering the construction loan. It is improper to disregard this teaching of both an administrative unit (system administrator) and a lender distinct from the administrative unit (system administrator) in an attempt to deprecate Applicant's invention as recited in claim 8. Such impropriety would amount to a mischaracterization of what Ingram fully and fairly teaches or suggests.

As set forth above, Ingram fails to suggest the desirability of modifying the Ingram processes to include the lender selection list so that a builder can select a desired lender, as recited in claim 8. That is, Ingram suggests that the method taught by Applicant would yield unacceptable results. In addition, a modification to Ingram to something more closely resembling Applicant's invention would render Ingram unworkable for its intended purpose. Moreover, a mischaracterization of what the prior art fully and fairly teaches or suggests is improper and impermissible. Consequently, a proper obviousness evaluation indicates that Applicant's invention of claim 8 is neither taught nor suggested by the prior art. Such things which Applicant claims and which are not taught or suggested by the prior art provide strong grounds for allowance of the claims.

In further regard of independent claim 8, the Office Action alleges that Ingram discloses determination of approval of a construction loan by the desired lender, and cites FIG. 3C, element 58, FIG. 11, and paragraph 48, certification process in support of such a disclosure. Applicant presumes that this

allegation of "determination of approval of a construction loan by the desired lender" set forth in the Office Action correlates with the actual recitation in independent claim 1 of "determining approval of a construction loan for the construction project upon receipt of the information, the determining operation being performed by the desired lender." The determining approval limitation of claim 8 emphasizes the direct loan relationship between the lender and the borrower via the electronic submission mechanisms of Applicant's invention to affect a direct construction loan from the lender to the builder.

The claim 8 recitation of the determining operation being performed by the desired lender is clearly not or suggested by Ingram. Indeed, the Office Action directly points to passages in the Ingram reference that teach away from the desired lender determining approval of a construction loan. FIG. 3C illustrates an approve loan element 58 in association with the administrative entity, and paragraph [0048] discloses that the approve loan process 58 is performed by the administrative entity not the lender. Consequently, Ingram again fails to teach or suggest the direct loan approach, in particular the desired lender determining approval of a construction loan, as recited in claim 8.

For the reasons set forth above, Ingram and DeFrancesco cannot be properly combined in an attempt to render obvious Applicant's invention of amended independent claim 8. Thus, Applicant respectfully requests withdrawal of the rejection of claim 8 under 35 U.S.C. §103(a) in view of Ingram and DeFrancesco. Claims 9-14 depend from claim 8 and are believed allowable for the reasons set forth in connection with claim 8. Thus, Applicant respectfully requests withdrawal of the rejection of claims 9-14 under 35 U.S.C. §103(a) in view of Ingram and

DeFrancesco. In addition, claims 9-14 are allowable for independent reasons.

Claim 10 includes the limitation of sending a user name and a password from the desired lender to the one builder upon determination of approval, the user name and password enabling the one builder to enter and submit electronically the information related to the construction project to the desired lender via the loan website. In keeping with the invention of claim 8, claim 10 distinctly points out that it is the lender and not some other entity, such as the Ingram administrative entity, that provides the appropriate authorization for the builder to enter into an electronic transfer of information between the builder and the lender. In doing so, the time consuming, redundant, and costly exchange of information between the builder and the lender is significantly reduced. Such methodology provides leverage for the lender to gain borrowers in a crowded financial lending marketplace. Thus, Applicant believes the invention of claim 10 is neither taught nor suggested by Ingram, alone or in combination with DeFrancesco.

Like claim 10, dependent claims 11 and 13 distinctly point out that it is the lender and not some other entity, such as the Ingram administrative unit, with whom the builder establishes a direct construction loan administrative relationship. Thus, the features of claims 11 and 13 are neither taught nor suggested by Ingram, alone or in combination with DeFrancesco, for the reasons set forth above.

Regarding claim 15, this Office Action sets forth reasoning as to its alleged unpatentability in view of Ingram. However, claim 15 was canceled in an Amendment After Final Action, dated 16 June 2006. Accordingly, any further discussion of claim 15 in this Office Action or in this Amendment is irrelevant.

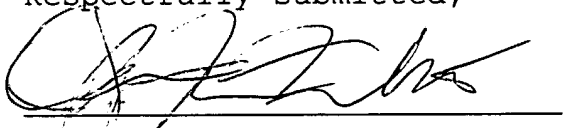
This Office Action rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over Ingram in view of DeFrancesco, and in view of Project Management: A Systems Approach To Planning, Scheduling, And Controlling, by Harold Kerzner (hereinafter Project Management). This Office Action alleges that Ingram does not specifically disclose calculation of a budget/actual cost difference as wither a surplus or deficit. This Office Action further alleges that Project Management discloses such a calculation and concludes that it would have been obvious to modify Ingram to include the consideration of calculated surplus/overrun. Claim 12 depends from amended independent claim 8. Thus, claim 12 is believed allowable for the reasons set forth above.

This Office Action rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over Ingram in view of DeFrancesco and further in view of Pacifica South Bancorp Construction Lending (hereinafter Pacifica). In particular, the Office Action alleges that Pacifica discloses the concepts of contractor lien and affidavits from subcontractors, and concludes that it would have obvious to modify Ingram to include such liens and affidavits to facilitate completion of financing processes for a construction project. Claim 16 depends from amended independent claim 8. Thus, claim 16 is believed allowable for the reasons set forth above.

Accordingly, this Amendment amends claim 8. Currently amended claim 8 remains in the application and is believed to be allowable. In addition, claims 9-14 and 16 remain in the application as previously submitted and are believed to be allowable.

Applicant believes that the foregoing amendments and remarks are fully responsive to the rejections recited in the 14 September 2006 Office Action and that the present application is now in a condition for allowance. Accordingly, reconsideration of the present application is respectfully requested.

Respectfully submitted,



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